

8 IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 26TH DAY OF MAY 1998



BEFORE

THE HON'BLE MR. JUSTICE G. PATRI BASAVANA GOUD

WRIT PETITION NUMBER 8048 OF 1995

Between:

Karnataka Electricity Board  
Cauvery Bhavan  
Bangalore 9  
represented by its  
Secretary

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-Petitioner

(By Sri B. C. Prabhakar, Advocate)

And:

1. The Secretary  
Karnataka Electricity Board  
Employees' Union  
Local Committee  
Attavara  
Mangalore 575 001  
represented by  
Sri P. Chandrashekar Aithal  
Jr. Engineer (Ele.)

2. The Presiding Officer  
Labour Court  
Mangalore

-Respondents

(By Sri K. Subbarao, Adv. for R-1;  
R-2 served)

This writ petition is filed under Articles 226 and 227 of the Constitution seeking to quash the award dated 30-4-1994 passed by the second respondent in Reference I.D. LCM No.87/91 (Annexure-A).

This writ petition coming on for hearing this day and having been reserved for orders, the Court this day made the following:

O R D E R

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O R D E R

Petitioner employer - Karnataka Electricity Board (KEB), in this writ petition under Articles 226 and 227 of the Constitution, seeks quashing of the award of the second respondent Labour Court, Mangalore dated 30-4-1994 at Annexure-A, by which Labour Court directed the petitioner employer to promote the workman Chandrashekhar Aithal, represented by the first respondent - Secretary of the Employees' Union, to the next higher post i.e. Assistant Engineer (Electrical), with effect from 24-3-1986 with consequential monetary benefits.

2. Chandrashekhar Aithal, after passing SSLC, did his two-year Senior Certificate Course in Electrician trade from RPT Institute at Mangalore. He joined KEB on 21-10-1970 as Operator. He was promoted as Supervisor (Electrical) which post was redesignated as Junior Engineer (Electrical). Promotion was with effect from 24-3-1976. The employer KEB <sup>was</sup> denied him promotion on the ground that he did not possess requisite qualifications. It was then that his cause was espoused by the Employees' Union through its Secretary - first respondent herein, and an industrial dispute was raised in that regard, that came to be referred by the appropriate Government under Section 10(1)(c) of the Industrial Disputes

Act, 1947 to the second respondent - Labour Court Mangalore, which reference, after adjudication on merits, culminated in the award impugned herein.

3. Relevant portion of the KEB Recruitment and Promotion Regulations, 1969 (R & P Regulations, for short) with regard to promotion of Junior Engineers (Electrical) to the post of Assistant Engineer (Electrical) reads thus:

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xxx	Method of Recruit-	Minimum qualifi-	xxx
xxx	ments	cation	xxx

B) By promotion of Junior Engrs.(El) on the basis of seniority -cum-merit

B).Candidates for Promotion:

(i) Should have a Diploma in Electrical Engg. or Mechanical Engg. of a Polytechnic of the State of Karnataka or equivalent qualification or Diploma or Certificate in Elecl. or Mechanical Engg. of the Erstwhile School of Engg., Bangalore

ii) Minimum experience of 5 years as Jr.Engr. El., in the case of Diploma Holder or 10 years in the case of Certificate Holders.

iii) Should have passed Ex. Higher Exam. and Kannada Language Test or should have obtained exemption from passing Kannada Language as per rules.

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4. Admittedly, the workman concerned herein is not a Diploma Holder in Electrical Engineering or Mechanical Engineering of a Polytechnic of the State of Karnataka, or an equivalent qualification. It is the next qualification that is pressed into service, namely, Diploma or Certificate in Electrical or Mechanical Engineering of the erstwhile School of Engineering, Bangalore. The workman is no doubt a certificate holder having secured two-year Service Certificate in Electrician Trade from the RPT Institute at Mangalore. The workman claims that this is the equivalent to the said certificate in Electrical Engineering of the erstwhile School of Engineering, Bangalore. If this contention is accepted, then, the workman, as a certificate holder, has put in 10 years of service as Junior Engineer (Electrical), and has also fulfilled the next requirement of higher examination and Kannada Language Test as per clause (iii) referred to above. Labour Court<sup>a</sup> has held that the workman possesses/qualification equivalent to that of a Certificate in Electrical as provided in Item (i) above, and as such, he is entitled to be promoted with effect from the day he completed 10 years as Junior Engineer i.e. 24-3-1986.

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5. The very first contention of Sri B. C. Prabhakar, learned counsel for the petitioner KEB, is that even assuming that the workman possesses a requisite qualification, Labour Court could not have given direction for promotion straight away, but, could have directed consideration of the case of the workman concerned for promotion. Sri K. Subba Rao for the first respondent Union, refers to a decision of the Supreme Court in THE DISTRICT REGISTRAR, PALGHAT AND OTHERS v. M. B. KOYYAKUTTY AND OTHERS, AIR 1979 SC 1060, to urge that if a candidate possesses requisite qualification, then, there is no error committed by the Labour Court in giving a direction for promotion. Sri K. Subbarao is right in so contending in the light of what the Supreme Court said in the said decision. This is what the Supreme Court observed in paragraph-30 of the judgment:

"30. The last point for consideration is whether it was proper for the High Court to issue a positive direction requiring the appellant to promote the respondent to the Upper Division and thereafter to determine his rank in the

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cadre of Upper Division Clerks. Ordinarily, the court does not issue a direction in such positive terms; but the peculiar feature of this case is that it has not been disputed that Koyakutty respondent satisfies the twofold criterion for promotion laid down in the statutory Rule 28 (b) (ii). Indeed, the District Registrar, Palghat, who was impleaded as respondent 3 in the writ petition, expressly admitted in paragraph 8 of his counter-affidavit filed before the High Court, "that the seniority of service is the basis of promotion from the ranks of Lower Division Clerks to the ranks of Upper Division Clerks provided they are fully qualified by passing the departmental tests for the purpose." It was never the case of the Registrar that Koyakutty was not otherwise fit for promotion. Indeed, even in the grounds of appeal to this Court, incorporated in the Special Leave Petition, it is not  
a alleged that Koyakutti did not satisfy the criterion of seniority-cum-fitness prescribed by Rule 28(b)(ii). The position

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taken by the appellant, throughout, was that this rule should be deemed to have been "supplemented" by the impugned Government Notification. It is not correct that the impugned Notification merely "supplements" or fills up a gap in the statutory rules. It tends to superadd or superimpose by an Executive fiat on the statutory rules something inconsistent with the same. Since the existence of both the criteria viz. seniority and fitness for promotion to the Upper Division prescribed by the statutory Rule 28(b)(ii), in the case of Koyakutty was not disputed, the High Court was justified in issuing the direction it did."

On facts, the only objection of the petitioner for the promotion of the workman Chandrashekhar Aithal is that the certificate that he possesses is not the certificate contemplated by the last portion of the first item. In respect of other prerequisites like 10 years experience, passing of higher examination and Kannada Language Test, etc, petitioner has no grievance at all. In the circumstances, therefore,



in the light of what the Supreme Court has observed, Labour Court's direction cannot be found fault with, if what the Labour Court has found with regard to certificate aspect is found to be correct.

6. The School of Engineering, Bangalore, had been closed by the time the KEB R & P Regulations came to be framed. The said Regulations have been framed in exercise of the powers vested in the Board under Section 79(c) of the Electricity Supply Act, 1948. The Board was aware of the fact that the School of Engineering, Bangalore, had been closed by the time the Regulations were framed. That is the reason why the said school was mentioned as erstwhile school of Engineering, Bangalore.

7. Sri B. C. Prabhakar for the petitioner KEB, submits that the only reason that a certificate from this erstwhile institute was referred to was for the reason that, by then, number of KEB employees were already there in service, ~~had been~~ holding the certificates from the said institute. In the circumstances, that appears to be the only reason. In that event, the certificate holders of only the said erstwhile school of Engineering, Bangalore were placed in a special category for the purpose

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of such certificate holder<sup>s</sup> if they were to have 10 years experience as Junior Engineer (Electrical), *for* being considered for promotion as Assistant Engineer (Electrical), other requisites having been fulfilled. In case of others, they should have Diploma in Electrical Engineering or Mechanical Engineering of a Polytechnic of the State of Karnataka or the equivalent qualification. Under the Regulations, no doubt, the Government has the authority to declare what the equivalent qualification is. But, as per the first item in the portion of the R & P Regulations extracted above, the question of considering the equivalent qualification would arise only vis-a-vis the Diploma in Electrical Engineering or Mechanical Engineering of a Polytechnic of the State of Karnataka. The said first item does not refer to equivalent qualification so far as the certificate of the erstwhile School of Engineering Bangalore is concerned. Therefore, no employee can claim that though he does not possess a certificate from the erstwhile School of Engineering, Bangalore, he possesses a certificate from other institute which is equivalent to the said certificate from the erstwhile School of Engineering.

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The workman Chandrashekhar Aithal particularly relied upon the communications from the Secretary of the Board of Technical Examinations dated 11-7-1989 and 20-8-1993. In the first communication, the Secretary of the Board of Technical Examinations informed Chandrashekhar Aithal that two-year Senior Certificate Course in Electrician Trade (which the workman had obtained from the Mangalore Institute) was equivalent to the corresponding certificate offered by the Industrial Training Institute of the Department of Employment and Training. In the next communication to the first respondent - Secretary of the KEB Employees' Association, the said Secretary of the Board of Technical Examinations informed that the School of Engineering, Bangalore had been conducting two types of courses, namely Diploma in Electrical Engineering and a Certificate Course in Electrical Engineering, first one being of three years duration equivalent to Diploma offered by the said Board of Technical Examinations, and the latter one being a certificate course of two years duration equivalent to Senior Certificate in Electrician trade or Certificate Course offered by the Department of Employment and Training. On the basis of these two communications, the workman

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contended, which contention was accepted by the Labour Court, that the certificate that he possesses was equivalent to the certificate of the erstwhile School of Engineering, Bangalore. The declaration that a particular examination is equivalent to what is specified in KEB R & P Regulations is issued by the Board of Technical Examinations and not by the Government. Sri K. Subbarao for the first respondent Union urges that in matters dealing with maintenance of industrial peace, the reasonable interpretation would be necessary and not a highly technical interpretation, since the industrial law is different from service law. Even assuming that the declaration of equivalent examination as done by the Board of Technical Examinations, instead of by the Government, could be accepted and acted upon, the fact remains that declaration of equivalent qualification would arise only in respect of Diploma in Electrical Engineering or Mechanical Engineering of a polytechnic of the State of Karnataka. Workman herein is not such a Diploma holder. He is a certificate holder. In respect of certificate holders, it is only the certificate granted by the erstwhile School of Engineering, Bangalore, that is recognised.

Regulations do not permit consideration of equivalent qualification in this regard. When there is no such provision for consideration of the equivalent qualification, there is no question of any authority declaring a particular course as equivalent to Certificate Course of the erstwhile School of Engineering, Bangalore. Since the workman is neither a Diploma Holder of a polytechnic of the State of Karnataka nor a person possessing equivalent qualification, and since he is also not a Diploma holder or a Certificate Holder in Electrical or Mechanical Engineering of the erstwhile School of Engineering, Bangalore, he does not possess the requisite qualification to be promoted as Assistant Engineer (Electrical). He was therefore not entitled to promotion. Labour Court erred in concluding to the contrary. For employees like Chandrashekhar Aithal, there is a scheme which provides that where there is no promotional avenue in the existing R & P Regulations, and where the concerned employee has completed 14 years of service in the same cadre/post, he shall be given the next higher scale. It is admitted on behalf of the petitioner KEB that since the workman Chandrashekhar Aithal has completed 14 years as

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Junior Engineer (Electrical), he is entitled to this higher scale of pay and the same had been offered to him. In the circumstances, this is the only benefit that the workman can avail of.

8. Writ Petition is allowed. Impugned award is quashed.

Sd/-  
JUDGE